

**SANITIZED DECS. 04-753 C & 04-754 W – BY GEORGE V. PIPER –
SUBMITTED FOR DECISION 4/26/05 – ISSUED 6/8/05**

SYNOPSIS

**CONSUMERS’ SALES AND SERVICE TAX AND WITHHOLDING TAX -
-BURDEN OF PROOF NOT MET** – When the Petitioner shows that he filed tax returns on behalf of the company during the audit period, and fails to corroborate in writing that he left the business in late 2002, the assessments must be upheld *in toto*, because no showing was made that the same were incorrect and contrary to law, in whole or in part.

FINAL DECISION

On October 15, 2004, the Internal Auditing Division of the West Virginia State Tax Commissioner’s Office issued a consumers’ sales and service tax assessment against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 15 of the West Virginia Code. The assessment was for the period of May 1, 2003 through December 31, 2003, for tax, interest, and additions to tax, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner.

Also, on October 15, 2004, the Commissioner issued a withholding tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code, for the period of June 1, 2003 through December 31, 2003, for a “money penalty” (tax only) of \$. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked December 7, 2004, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and 121 C.S.R. 1, § 61.3.3 (Apr. 20, 2003).

FINDINGS OF FACT

1. At the hearing Petitioner testified that he does not deny that the company owes the taxes but that he has not, in reality, been a part of the business since he “left” the same in November, 2002.

2. Petitioner further testified that he had no paperwork stating that he left the company because everything was verbal.

3. Petitioner also testified that he put a large amount of money into the business and that the other officer promised to purchase his interest and return the money, but nothing has happened.

DISCUSSION

The only issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part.

The testimony in this case shows that Petitioner is a responsible officer of the limited liability company, having previously filed tax returns. Also, Petitioner has submitted nothing in writing to corroborate his contention that he left the business in late 2002.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).
2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to his contention that he was not a responsible officer who was liable for the consumers' sales and service tax and withholding tax debts of the company. *See* 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumers' sales and service tax assessment issued against the Petitioner for the period of May 1, 2003 through December 31, 2003, for tax, interest, and additions to tax, totaling \$, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest accrues** on this consumers' sales and service tax assessment until this liability is fully paid.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the withholding tax assessment issued against the Petitioner for the period of June 1, 2003 through December 31, 2003, for a money penalty of \$, should be and is hereby **AFFIRMED**.